

December 27, 1989

MEMORANDUM

TO: Alan T. Shimabukuro, Director
Hawaii Criminal Justice Commission

FROM: Hugh R. Jones, Staff Attorney

SUBJECT: Disclosure of Information Relating to Attendees of
Third Annual Safety Seminar

This is in response to your letter dated October 3, 1989, requesting an advisory opinion regarding whether, under the Uniform Information Practices Act (Modified) ("UIPA"), chapter 92F, Hawaii Revised Statutes, the Hawaii Criminal Justice Commission ("Commission") may disclose the names, addresses, phone numbers, and professional affiliations of persons attending The Third Annual Safety Seminar.

ISSUE PRESENTED

Whether, under the UIPA, the Commission may disclose the names, home addresses, home telephone numbers, and professional affiliations of persons attending the Third Annual Safety Seminar, in response to a request for such information.

BRIEF ANSWER

The Commission should not disclose the home addresses and home telephone numbers of persons who attended the seminar because individuals have a significant privacy interest in avoiding the unlimited disclosure of such information. In balancing this privacy interest against the public interest in disclosure, we conclude that disclosure of the home addresses and home telephone numbers of persons attending the Commission

seminar would constitute "a clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes. Disclosure of this information would not promote any UIPA based public interest, which like the federal Freedom of Information Act, is to provide the public with information which would shed light on an agency's performance of its statutory duties or upon the conduct of an agency or its officials.

On the contrary, although individuals also have a privacy interest in such information as their name, as contained within government records, disclosure of the seminar attendees' names and professional affiliations would shed light upon whether the Commission is performing its statutory duty to provide a mechanism for citizen and community input into governmental activities concerning crime prevention and the development of programs, projects, and activities concerning crime education and prevention. There is a significant public interest in the disclosure of information indicating whether the Commission is reaching out to the citizenry and community for input into the control and prevention of crime, one that we believe outweighs the attendees' privacy interest in their names.

FACTS

The Commission, with the cooperation of the Honolulu Police Department and Department of Education, recently sponsored The Third Annual Safety Action Seminar, the focus of which was "The Prevention of Youth Gang Involvement and Substance Abuse." The Commission is administratively attached to the Department of the Attorney General. Among the Commission's statutory duties are to provide a mechanism for citizen and community input into governmental activities relating to crime prevention, and the development of programs, projects, and activities on the subject of crime prevention and control. See Haw. Rev. Stat. . 28-10.7 (Supp. 1989).

The seminar sponsored by the Commission was open for the attendance of "teams" comprised of between six and ten persons in number. These teams included representatives of state and local government, law enforcement agencies, and community leaders from educational institutions, community programs, business, the media, and clergy. In order to attend the seminar, each "team" coordinator completed a Seminar

Registration Application. The Application includes information on the team coordinator's name, affiliation, mailing address, city, state, and phone number. Additionally, the Application lists each team member's name and affiliation.

After the conclusion of the seminar, the Commission received a request from a church official for the names and addresses of all persons who had attended the seminar. The Commission requests an advisory opinion concerning whether it may disclose the names, addresses, telephone numbers, and affiliations of seminar attendees in response to a request under the UIPA.

DISCUSSION

The UIPA is the State's new public records law which promotes open government while protecting the individual's constitutional right to privacy. Haw. Rev. Stat. . 92F-2 (Supp. 1989). The UIPA begins with the general directive that, "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1989).

The UIPA contains various exceptions to this general directive which are set forth at section 92F-13, Hawaii Revised Statutes. Among other things, the UIPA does not require disclosure of "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. . 92F-13(1) (Supp. 1989). Under the UIPA, "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. . 92F-14(a) (Supp. 1989).

The Applications filed with the Commission constitute "government records" maintained by an "agency." See Haw. Rev. Stat. . 92F-3 (Supp. 1989). Therefore, as a preliminary matter, it must be determined whether the disclosure of the names, home addresses, and home telephone numbers of the "team coordinators" or the name and affiliation of "team members" as contained in the Applications would affect a personal privacy interest such that section 92F-13(1), Hawaii Revised Statutes, may be applicable.

Although there is not unanimity among all authorities,¹ the greater weight of authority holds that the privacy interest of an individual in avoiding the unlimited disclosure of his or her name and home address is significant. See National Association of Retired Federal Employees v. Horner, 879 F.2d 873 (D.C. Cir. 1989); United States Department of the Navy v. FLRA, 840 F.2d 1131, 1136 (3rd Cir. 1988) (individuals generally have a meaningful interest in information concerning their homes which merits some protection); Heights Community Congress v. Veterans Administration, 732 F.2d 526, 529 (6th Cir. 1984) (important privacy interest in "home addresses"); American Federation of Government Employees v. United States, 712 F.2d 931, 932 (4th Cir. 1983) ("employees have strong privacy interest in their home addresses"); Wine Hobby USA, Inc. v. IRS, 502 F.2d 133, 136-137 (3rd Cir. 1974) (privacy of the home traditionally respected); Minnis v. United States Dept. of Agriculture, 737 F.2d 784, 787-788 (9th Cir. 1984) ("disclosure would implicate more than a minimal privacy interest"); DiPersia v. U.S.R.R. Retirement Bd., 638 F. Supp. 485, 489 (D. Conn. 1986) ("substantial privacy interest exists in a list of names and addresses").²

Further, the Supreme Court has made clear that Exemption 6 of the Federal Freedom of Information Act ("FOIA") (which is nearly identical to section 92F-13(1), Hawaii Revised Statutes), was designed to protect personal information in public records even if it is not embarrassing or of an intimate nature:

Information such as place of birth, date of birth, date of marriage, employment history, and comparable data is not normally regarded as highly personal, and yet . . . such information would be exempt from any disclosure that would constitute a clearly unwarranted invasion of privacy.

Department of State v. Washington Post Co., 456 U.S. 595, 600, 102 S. Ct. 1957, 1961, 72 L. Ed. 2d 358 (1982).

¹ The legislative history to the UIPA suggests that "[t]he case law under the Freedom of Information Act should be consulted for additional guidance" regarding an individual's privacy interest. S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1094 (1988).

² But see Ditlow v. Schultz, 517 F.2d 166 (D.C. Cir. 1975); Getman v. N.L.R.B., 450 F.2d 670 (D.C. Cir. 1971).

Having concluded that an individual has a significant privacy interest avoiding the unlimited disclosure of such information as their name, home address, and home telephone number,³ that interest must be balanced against the public interest in disclosure to determine whether such a disclosure would be "clearly unwarranted." Under FOIA, federal courts also balance these interests under Exemption (b)(6) which allows a federal agency to withhold disclosure of government records, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. . 552(b)(6).

Recently, the United States Supreme Court, in a significant FOIA decision, held that in balancing the public interest in disclosure against an individual privacy interest under 5 U.S.C. . 552(b)(7)(C)⁴, only a FOIA based public interest in disclosure may be considered by the Court in balancing such interest against the privacy interest involved. U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. ___, 103 L. Ed. 2d 774, 109 S. Ct. 1468 (1989). In Reporters Committee, the Court, after reviewing FOIA's legislative history, concluded that:

This basic policy of "full agency disclosure unless information is exempted under clearly delineated statutory language," [cite omitted] indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own

³ We believe that there is no logical reason to treat one's home telephone number differently than one's home address under the UIPA.

⁴ 5 U.S.C. . 552(b)(7)(C) permits an agency to withhold disclosure of law enforcement records to the extent that disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

conduct. In this case--and presumably in the typical case in which one private citizen is seeking information about another--the requester does not intend to discover anything about the conduct of the agency that has possession of the requested records. Indeed, response to this request would not shed any light on the conduct of any Government agency or official.

Id. 489 U.S. at _____, 103 L. Ed. 2d at 796, 109, S. Ct. at 1481 (emphasis added).

After the Reporters Committee decision, the United States Court of Appeals for the District of Columbia in two separate cases, held that the Reporters Committee decision applied equally to the balancing required by Exemption (b)(6) of FOIA, which is nearly identical to section 92F-13(1), Hawaii Revised Statutes. In National Association of Retired Federal Employees v. Horner, 879 F.2d 873 (D.C. Cir. 1989), the court concluded that the disclosure of the names and home addresses of retired and disabled federal employees to a lobby group to assist in the passage of laws benefiting the public would constitute a "clearly unwarranted invasion of privacy." The court, finding the Reporters Committee case controlling, reasoned that:

[U]nless the public would learn something directly about the workings of the **Government** by knowing the names and addresses of [the retirees], their disclosure is not affected with the public interest The simple fact is that those records say nothing of significance about `what the[] Government is up to.'

Id. 879 F.2d at 879 (emphasis added).

Thus, in balancing an individual's "not insubstantial" privacy interest in their name and home address against the absence of a FOIA-based public interest, the court concluded that "something, even a modest privacy interest, outweighs nothing every time." Id. at 879.

Similarly, in Federal Labor Relations Authority v. U.S. Department of the Treasury, 884 F.2d 1446 (D.C. Cir. 1989), the court reaffirmed in an Exemption (b)(6) case, that the Supreme Court's holding in Reporters Committee made clear that under FOIA, the public interest in disclosure "must be measured in

terms of its relation to FOIA's central purpose--`to ensure that the government's activities be opened to the sharp eye of public scrutiny.'" Id. 884 F.2d at 1451. Thus, the FLRA court held that the disclosure of names and home addresses of federal employees for collective bargaining purposes would "constitute a clearly unwarranted invasion of personal privacy." Id. The court specifically rejected the argument that it could consider public policies as evidenced by federal statutes other than FOIA in balancing the public interest in disclosure against an individual's privacy interest. Id. 884 F.2d at 1452-1453.

In applying the Reporters Committee decision and its progeny to the question presented by the Commission, we believe that the disclosure of the home addresses and home telephone numbers of individuals who attended the seminar would constitute a "clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes. We do not believe that disclosure of the home addresses and telephone numbers of persons attending the Commission seminar would shed any light on Commission conduct, its duties, or on "what the agency is up to."

On the contrary, we believe that under the UIPA, the Commission may permissibly disclose the names and professional affiliations of the individuals who attended the seminar. Despite the fact that recent court decisions under FOIA indicate that persons have a significant privacy interest in avoiding the unlimited disclosure of their name (as contained within a government record), we believe that disclosure of this information would shed significant light upon the Commission's performance of its statutory duties. Specifically, disclosure of this information would directly reveal the extent to which the Commission is reaching out to citizens and the community (as well as what segments of the community) for input into governmental activities concerning crime prevention and control.

We agree with the Supreme Court that in the usual case, "the disclosure of information about private citizens that is accumulated in various government files . . . reveals little or nothing about an agency's own conduct." Reporters Committee, 489 U.S. ___, 103 L. Ed. 2d at 796, 109 S. Ct. at 1481. However, we also believe that this is one of those unusual circumstances where disclosure of such information would say something of significance about what the government is up to.⁵

Accordingly, we conclude that the Commission may disclose the names and professional affiliations of those individuals attending the seminar, because their privacy interest in such information is outweighed by the public interest in disclosure. See Haw. Rev. Stat. . 92F-14(a) (Supp. 1989).

Lastly, the Commission must disclose the name, business address, and business telephone number (if known) of any seminar attendee who is employed by a government "agency" as that term is defined in section 92F-3, Hawaii Revised Statutes, since government employees have no privacy interest in such information. See Haw. Rev. Stat. . 92F-12(a)(14) (Supp. 1989).

The Legislature concluded that as to the records described in section 92F-12(a)(14), Hawaii Revised Statutes, the exceptions such as for personal privacy are inapplicable. Conf. Comm. Rep. No. 235, 14th Leg. 1988 Reg. Sess., Haw. S.J. 689, 690 (1988).

In the future, the Commission may wish to consider requesting the prior written consent of seminar applicants to disclose their home addresses and home telephone numbers to any person for the purposes of networking or the establishment of "teams." Under section 92F-12(b)(1), Hawaii Revised Statutes, the Commission may disclose any government record "if the requesting person has the prior written consent of all individuals to whom the record refers." This would allow the Commission to disclose this information for those individuals who consent to the disclosure of such data.

CONCLUSION

Seminar attendees have a significant privacy interest in avoiding the unlimited disclosure of such information as their name, home address, and home telephone number. Disclosure of the home addresses and home telephone numbers of those who attended the Commission's seminar would say nothing of significance concerning the Commission's performance of its

⁵ We believe that like FOIA, the UIPA exceptions should be construed narrowly with all doubts resolved in favor of disclosure. See Department of the Air Force v. Rose, 425 U.S. 352, 361-62, 96 S. Ct. 1592, 1599-1600, 48 L. Ed. 2d 11 (1976).

statutory duties, its conduct, or its officials. Therefore, disclosure of this information would constitute a "clearly unwarranted invasion of personal privacy," and should not be disclosed.

On the contrary, disclosure of the names and professional affiliations of persons attending the seminar would shed significant light upon the extent to which the Commission is performing its statutory duty to reach out to citizens and the community for input into government activities concerning crime prevention and control. Despite an individual's significant privacy interest in details such as their name and address, we believe, at least as to the attendees' names, that this interest is outweighed by the public interest in disclosure. Lastly, the Commission should also disclose the name, business address and business telephone number of any "agency" employee who attended the seminar, as they have no privacy interest in such information under the UIPA.

Hugh R. Jones
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APPROVED:

Kathleen A. Callaghan
Director